

THE RIDDLE OF THE BAVLI: A LITERARY-ANALYTICAL SOLUTION

A Reprise of Six Monographs

by

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Describing the literary character of the Talmud of Babylonia requires us to answer questions not of contents but of context: how does the document relate to prior writings of the same origin, namely, writings attributed to the sages of Judaism of the first seven centuries of the common era. In point of fact, we may without difficulty differentiate three types of writings: [1] writing that is not shaped by documentary requirements, [2] writing that is not shaped by the documentary requirements of the compilations we now have, and also [3] writing that is entirely formed within the rules of the documents that now present that writing. That is, a given document exhibits definitive traits of rhetoric, logic of coherent discourse, and topical and even propositional program. A composition in said document that conforms to that definition as a matter of hypothesis may be assumed to have been written with that document in mind. A composition that is included in such a document but pursues its own program, idiosyncratic by the criterion of the document that contains it, but conforming to the protocol of some other document, was written with that other document in mind. An example would be, for example, a composition in *Leviticus Rabbah* that clearly follows the program and plan of *Genesis Rabbah*, or in *Sifra* that clearly follows those of the *Mishnah*. There are, in addition, extensive compositions and composites that find a natural place in no document we now have, e.g., collections of sayings attributed to, and stories about, named authorities, though we have no documents made up of collections of such materials formulated around individual sage's name or around sages as a group. A document that is made up principally of the first category of compositions and even composites, then,

may be said to constitute a document of integrity and cogency and then is to be read as such. And that brings us to the riddle of the Bavli.

The first task in describing the Bavli is to ask whether or not the document is coherent and purposive, in which case we may indeed classify it as a document of integrity and cogency, one that makes a statement, or whether it is simply a conglomerate of free-standing traditions, with no program or viewpoint of its own. In the monographs surveyed in a prior article, "The Talmud of Babylonia: System or Tradition? A Reprise of Seven Monographs,"¹ I summarized the research that led me to conclude the Bavli indeed forms a coherent statement of its own.² Moving beyond those results, in the six monographs summarized here I address two distinct problems. The first concerns the definition of what I conceive to form the Bavli's cogent statement. If the Bavli really constitutes a document of formal integrity, as I have already shown, then can I point to traits of substantive coherence as well? I conducted monographic experiments to yield data in response to that question in 1) *The Bavli's One Statement*, 2) *The Law Behind the Laws. The Bavli's Essential Discourse*, and 3) *The Bavli's Primary Discourse. Mishnah Commentary, its Rhetorical Paradigms and their Theological Implications in the Talmud of Babylonia Tractate Moed Qatan*. The second question has concerned the Bavli's relationship to prior writings, both redacted in something like the form in which we know them, and also not redacted in any document we now have, but nonetheless available to us in clearly differentiated form. I want to know how the framers of the Bavli have utilized received writings. These monographs are 4) *How the Bavli Shaped Rabbinic Discourse*, 5) *The Bavli's Massive Miscellanies. The Problem of Agglutinative Discourse in the Talmud of Babylonia*, and 6) *Sources and Traditions. Types of Composition in the Talmud of Babylonia*. For the convenience of colleagues interested in the problem I address but unlikely to work through the detailed monographs I have completed, I summarize the results I have reached on these two important questions.

1. *Hebrew Annual Review* 13, 1991, pp. 89-106.

2. Neusner 1987, 1990a, 1990b, 1990c, 1990d, 1991a, 1991b.

I. TOWARD THE DEFINITION OF THE BAVLI'S ONE STATEMENT. FROM FORMAL COHERENCE TO SUBSTANTIVE COGENCY.

1. The Bavli's One Statement. The Metapositional Program of Babylonian Talmud Tractate Zebahim Chapters One and Five. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

When a document says the same thing about many things, it presents not only propositions but a metaproposition, a substrate that frames the teleology of its recurrent propositions. Since in the prior set of seven monographs I proved that the Talmud of Babylonia, a.k.a. the Bavli, says a great many things in only a single manner, everywhere appealing to a severely restricted rhetorical repertoire that serves throughout, I here ask the question, how are we to know whether, in saying in one way a great many things, the document's authors propose also to say one thing about a great many things? At stake in the answer to that methodological question is the identification of the metapositional statement implicit in an exceptionally diverse and intellectually prolix piece of writing. Once I have demonstrated how to identify the metapositional program to which propositional inquiries repeatedly point and even suggested one of the main points of that program, I shall know how systematically to identify the Bavli's metapositional program in a large sample of the whole. I dealt in this monograph with Bavli Zebahim Chapter Five. My results proved somewhat complicated, so I begin with an explanation of the context in which I read this Talmudic chapter. For at issue here is, when does a list become a series, or, in broader terms, how does static thought become dialectical?

Static thought is represented by the taxonomic method of the Mishnah. The Mishnah portrays all things at rest, a beautifully composed set in stasis, a stage on which nothing happens. The Bavli portrays all things in motion, a world of action, in which one thing leads to some other, and nothing stands still. All of this is accomplished in a shift in the received mode of thought, and the shift is set forth in the metaproposition, fully exposed, in the Bavli's reading of two paragraphs of the Mishnah. We now consider what I conceive to be the counterpart program to the one that, in my view, the Bavli's sages inherited from the Mishnah and spelled out in tedious and unending particulars. To understand what is fresh and important in the Bavli's metapositional program concerning the nature of thought, we have to call to mind what they inherited, for what they did was to impose the stamp of

their own intellect upon the intellectual heritage that the Mishnah had provided for them. The Mishnah teaches the age-old method of scientific thought through comparison and contrast. Like things follow like rules, unlike things, the opposite rules, and the task of thought is to show what is like something else and therefore follows the rule that governs that something else; or what is unlike something else and therefore follows the opposite of the rule that governs that something else. So the Mishnah's mode of thought establishes connections between and among things and does so, as is clear, through the method of taxonomy, comparison and contrast, list-making of like things, yielding the rule that governs all items on the list.

With the Mishnah's position in hand, we revert to my claim that the Bavli's own statement in the Mishnah chapter under discussion concerns the nature of thought. Let me first summarize the results of my protracted analysis of Bavli Zebahim Chapter Five:

1. it is important to know how to connect rules to Scripture;
2. the principles that govern the making of connections to Scripture are those that dictate the manner of making connections not between words and words ("the hermeneutical principles") but rather between one thing and something else, that is, defining a genus and its species; so when we know how to compare and contrast, find what is like something else and what is different from something else, we know how to conduct the passage from rules to Scripture;
3. exegetical rules tell us how to form classes of things in relationship to Scripture;
4. dialectical rules tell us how to move from one class of things to another class of things.

No. 2 then marks the point of departure, and Nos. 3 and 4, the remarkable shift in the passage. We go not only from rule to generalization, or from case to principle. That, to be sure, takes place and forms an everywhere-present metaproposition, as the tedium of the remainder of the chapter showed us. Rather, we go from thinking about things and their connections (comparison and contrast) to thinking about thought itself. So what I have represented as the rules of dialectical thinking — not merely argument! — turn out to tell us how thought happens; the Bavli's reading of Mishnah-tractate Zebahim 5:1-2 forms a fundamental exercise of thought about when a list become a series, or how thinking changes from a static to a dialectical mode.

When we review the principal steps in the sustained and unfolding inquiry, we realize that, in particulars and in detail, the framers of the passage have set forth a profound essay on thought. In the terms just now given, if

$A=B$, and $B=C$, then does $C=A$? Is a series possible? Are there limits to the extension of a series? And on what basis do we construct a series? Do the media of linkage between A and B, that is, $A=B$, have to be the same as those that link B to C, for C to stand in the series that A has begun? These abstract questions have to become concrete before the sense of matters will emerge. So let us now review the sequence of points that represent the inquiry into the making of connections, which is to say, the Bavli's metapositional statement on the character of a series. For it is the series, first this, then that, finally the third thing, and the rules that govern the movement from this, to that, to the third thing, that defines what is the center of deep thought in the Bavli's reading of the specified Mishnah-paragraphs. I cite the pertinent language, found at Bavli Zebahim 48a, reviewing what I give in detail in the monograph summarized here, and then provide my comments that specify what I conceive to be the metapositional issues under discussion. The stages in the argument of the Talmud are marked by bold face capital letters.

A. II.2.E. That answer is satisfactory for him who takes the view that one may indeed derive a rule governing a prior subject from one that is given later on, but from the perspective of him who denies that fact, what is to be said?

The opening question contains the entirety of what is to follow: the conviction that anterior to conclusions and debates on fixed propositions is a premise, and the premise concerns not issues but thought itself. For what is before us is not a hermeneutical principle that guides the exegesis of Scripture, the movement from a rule back to a scriptural formulation deemed to pertain. It is a rule of how to think. And the issue is explicit: does thought flow, or does it stand still? Does it flow backward from conclusion to a conclusion already reached? In the context of the document at hand, the issue is one of arrangements of words, that is, a literary and therefore an exegetical question. That is, then, the proposition. But the metaposition is otherwise, though that is not yet explicit.

B. II.2.J. But this is the reason for the position of the rabbis, who declare one exempt [from having to present a suspensive guilt offering in the case of a matter of doubt regarding acts of sacrilege]: they derive a verbal analogy to a sin offering based on the appearance of the word 'commandments' with reference to both matters.

N. They take the view that one may not derive from an argument by analogy established through the use of a word in common only a limited repertoire of conclusions. Rather, once the analogy is drawn, then all of the traits of one case apply to the other.

Here is an issue not of exegesis, therefore of hermeneutics, but of the rules of right thinking: thinking about thought. And what it concerns, as I have suggested in context, is how we establish not classes of things but linkage between and among classes of things. Let me state the centerpiece in simple words but with heavy emphasis: *since I make connections through analogy and contrast, may I proceed to make connections beyond the limits of the original connection? And the answer is, I must proceed, because thought does not come to rest. Comparison and contrast yield connections, which then govern.*

In the language before us, once I draw an analogy, do all traits of the two classes of things that have been linked through analogy — of necessity only partial, since were the analogy entire, both classes would constitute a single class! — pertain to each class? In the present context, what we establish is the anonymous, therefore the governing rule. The norm is that once we draw an analogy, the connection established by the (mere) analogy takes over, so that we treat as analogous traits not covered by the analogy at all. The analogy establishes the connection; but then the movement of thought is such that the connection is deemed to have established a new class of things, all of them subject to one rule. The movement — the dialectic — therefore is not a mere trait of argument, "if you say this, I say that," but a trait of thought: if this is the result of step A, then step B is to be taken — out from, without regard to, the limitations of step A. Thought then is continuous, always in motion, and that metaproposition states in the most abstract terms possible the prior and generative metaproposition that, when we compare classes of things, the comparison initiates a process that transcends the limits of comparison. That is to say, again with emphasis, *we can effect a series.*

C. II.2.S. One authority maintains that proof supplied by analogy [here: the analogy sustained by the use of "and" to join the two subjects] takes priority, and the other party maintains that the proof supplied by the demonstration of a totality of congruence among salient traits takes precedence. [Rabbis prefer the latter, Aqiba the former position.]

T. Not at all! All parties concur that proof supplied by analogy [here: the analogy sustained by the use of "and" to join the two subjects] takes priority. But rabbis in this context will say to you that the rule governing the subject treated below derives from the rule governing the subject treated above, so that the guilt offering must be worth a least two silver sheqels. This is established so that you should not argue that the doubt cannot be more stringent than the matter of certainty, and just as where there is certainty of having committed a sin, one has to present a sin offering that may be worth even so little as a sixth of a zuz in value, so if there is a matter of doubt, the guilt offering worth only a sixth of a zuz would suffice.

Once the connection is made, linking an earlier rule (in Scripture's orderly exposition) to a later one, then the connection is such that movement is not only forward but backward. We have established not a connection between one thing and something else, but a series that can encompass a third thing and a fourth thing, onward — but with, or without, formal limit? This principle of right thinking that the hypothesis of the series requires is revealed by Scripture, as is made explicit once more in the following:

D. III.1.1. ... And should you say that if Scripture had not included the matter, we should have reached the same conclusion by argument for analogy, then if that is the case, we can infer by analogy also the rule on laying on of hands... [The main point here is that, once an analogy serves, it serves everywhere an analogy can be drawn; there is no *a priori* that limits the power of an analogy to govern all like cases].

A series is possible once the work of thought moves beyond contrast and analogy. And it is the rule of right thought that, once we have established a comparison and a contrast, that fact validates drawing conclusions on other aspects of the classes of things that have been connected through the comparison and contrast — analogical-contrastive thinking is then not static but in motion. Is the motion perpetual? Not at all, for Scripture, for its part, has the power to place limits on a series.

E. IV.2.B. If a matter was covered by an encompassing rule but then was singled out for some innovative purpose, you have not got the right to restore the matter to the rubric of the encompassing rule unless Scripture itself explicitly does so. [That means that the encompassing rule does not apply to an item that Scripture, for its own purposes, has singled out. The upshot is that the identified item is now exceptional in some aspect, so it is no longer subject to a common rule governing all other items in context; then the limits of analogy are set by Scripture's treatment of the items of a series. It is worth while reviewing the pertinent example:]

The series is subjected to limits, if an item in the sequence of connections that forms the series proves exceptional: this is connected to that, that to the other thing, but the other thing is other in some other way, so there the series ends.

The upshot is simple: I have two items, A and B. I claim that B is like A, therefore the rule governing A applies also to B. Now I turn forward, to C. C is not analogous to A; there are no points of congruence or (in the exegetical formulation that our authors use) verbal intersection. But C is like B. It is like B because there is an analogy by reason of verbal intersection (the same word being used in reference to C and B.) The question is, may I

apply to C, by reason of the verbal intersection between C and B, the lesson that I have learned in regard to B only by reason of B's similarity by reason of congruence, not verbal intersection, to A? Can a conclusion that is derived on the basis of a verbal analogy go and impart a lesson by reason of analogy to a third item? Raba now maintains that that is not the case. But the matter has gone in the other direction: a series is possible. But if a series is possible, then what limits are to be placed on the media by which a series is effected?

G. IV.5.A. Now it is a fact that that which is derived on the basis of a verbal analogy does in turn go and impart a lesson by means of a verbal analogy, *demonstrated whether in the manner of Raba or in the manner of Rabina.*

Now we revert to our basic issue: the validity of a series. Here we move into as yet unexplored ground, which is the basis for my claim that the order of problems is dictated by an interest in a systematic presentation of the rules of right thinking. We have been exposed to the case in favor of a series: once the analogy makes the connection, then all traits of the things connected are brought into relationship with all other such traits. Scripture then provides one limit to the length of a series: a series cannot be infinite. But there is another limit proposed, and it is not scriptural but substantive, in the nature of things, a trait of thought itself. Here is the point at which I find this sustained exposition of thinking about thought simply remarkable.

B. Is it the rule, however, that *that which is derived on the basis of a verbal analogy may in turn go and impart a lesson by means of an argument on the basis of congruence?* [Freedman: Thus the law stated in A is applied to B by analogy. Can that law then be applied to C because of congruence between B and C?]

We have proven one point. It bears a consequence. We go on to the consequence. The mode of thought is dialectical not only in form, but also in substance: if A, then B. If B, then what about C? It is one thing to have shown that if B is like A, and C, unlike A, is rendered comparable to B by a verbal analogy. But then may I take the next step and draw into the framework of B and C, joined by verbal analogy and assigned a common rule by B's congruent-analogy to A, also D, E, F, and G, that is, other classes of things joined to C by verbal analogy — but not necessarily the same verbal analogy that has joined C to B? That indeed is the obvious next step to be taken, and it is now taken. It is taken in the simple words just now given, and the same point is now going to be made, in a systematic way, for each medium by which classes of things are formed and then connected to one another. Analogical contrastive thinking therefore is not static but always in

motion, since, once a connection is made, other connections made follow. If we make a connection between A and B on the basis of one set of shared traits, we may proceed to make a connection between C and A, via B, on the basis of traits shared by B and C but not by A and C. Not only so, but the same mode of thought extends to the media of connection. If I connect A to B by verbal analogy, I may connect B to other classes of things, e.g., C, D, E, by other media of connection: verbal analogy connects A to B, and an argument based on congruence connects B to C, and backward to A; and an argument *a fortiori* may connect C to D, and backward to A and B — series without end, or series that end only in the dictates of revelation, the ultimate arbiter of the classification and hierarchy of all things. What is truly impressive in what follows is the rigorous order by which each possibility is raised in its turn, the connections fore and aft, such that the framer of the whole not only makes his point in words, but also illustrates it in his own representation of matters: a series is not only possible, it is also compelling.

At stake throughout is the question of how a series is composed: the media for the making of connections between one thing and something else (that is, one class of things and some other class of things, in such wise that the rules governing the one are shown by the analogy to govern the other as well). We want to know not only that a connection is made, but how it is made. And some maintain that if the connection is made between one thing and something else by means, e.g., of a verbal analogy dictated by Scripture's wording, then a connection between that something else and a third thing must also be made in a manner consistent with the initial medium of connection, verbal analogy. It cannot be made by means of some other medium of connection. But the paramount position is otherwise: dialectics affect not only argument but thought itself, because connections are made through all media by which connections are made.

So to conclude this brief summary: the metapropositional program contributed by the Bavli's framers concerns how series are made, which is to say, whether connections yield static or dynamic results, or, at the deepest layers of intellect, how thought happens. Now, at the end, we ask the framers of the Mishnah to address the question before us. And in answer, they give us silence. So we know that here we hear what is distinctive to, and the remarkable discovery of, the authorship of the Bavli. Since, it is clear, that discovery has taken place within the words of the written Torah, and, since their deepest metaproposition maintained that the words of the written Torah are the words of God to Moses, our rabbi, at Sinai, — the words, not just the gist — we have to conclude with what I conceive to be the bed-rock of the

metapropositional program before us: the Torah teaches us not only what God said, but how God thinks. When we understand the Torah rightly, we engage in thinking about thought. And that is how we know God: through thought. So Spinoza was not so heretical after all.

2. *The Law Behind the Laws. The Bavli's Essential Discourse.* Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

The logically consequent question is whether, underneath the detailed discussions is a subtext: a set of laws that yields principles, holding together a great many more laws. The Talmud transcends its origins when it speaks beyond the limits of cases and rules and frames discrete rules, pertinent to particular examples, in broad and universal laws. Where, in the Bavli, we occasionally find a sequence of unrelated cases or examples, with a single rule deemed to be pertinent to them all, or with all of them held to demonstrate one fact that transcends the details of any one, then we confront an exercise in discovering the law beyond the laws. Even though, in the Bavli, these exercises are not numerous and form no preponderant part of any tractate, not even making an appearance in some tractates, they constitute, nonetheless, a distinct and important component of the intellectual repertoire and structure of the document. This monograph presents the passages in the Bavli that ask questions of generalization and conclusion, making the effort to form the detailed and the arcane into propositions of general intelligibility and universal relevance. These passages attract attention because they both contribute to the exposition of the Mishnah and also transform Mishnah-exegesis from a text-bound and limited exposition into an intellectually engaging inquiry that stands on its own and forms of passages of the Mishnah a composite of a transcendent order.

My inquiry is not complicated; I want only to show that in its quest for the law behind the laws, the Bavli accomplishes what I claim in its behalf: a discourse essential to itself, different from that of the framers of the Mishnah and from that of exegetes of the Mishnah. I want to know what these discourses look like, and quite honestly I want to place on display as many of them as I can, to show in detail what I conceive to be a critical and definitive trait of the document as a whole. So I surveyed, for nineteen tractates, essays in the presentation of the law behind the law. These composites, ordinarily crafted with skill and wit, rarely leave any doubt as to their character and purpose. I call them the essential discourse of the Bavli for a very simple

reason. If we want to know how the Bavli speaks in its own name, and not merely in the name of the authors out of the past whose writings it proposes to clarify or, even, merely preserve in tact, it is in these composites that they will deliver their message.

THE LAW BEHIND THE LAWS: IS IT PERMITTED TO TAKE THE LAW INTO ONE'S OWN HANDS?

To exemplify the character of discourse that strikes me as not-exegetical, but rather abstract, theoretical, and propositional in a sustained way — that is, the discourse I deem essential to the Bavli and indicative of its intellectual might — I present the case that drew my attention to the need to learn more about the kind of writing under discussion here. This is the item that concluded *Sources and Traditions*, discussed below. The passage directly continues the one just now cited and serves the next clause of the same Mishnah-paragraph. The issue comes up somewhat abruptly, at B. B.Q. 27b-28a, in the context of the detailed exposition of the rule at hand. But once the issue is framed, it takes over, and from there to the end, it remains the same. It is to be framed as a debate:

[1] A man does not have the right to take the law into
his own hands

versus

[2] A man has the right to take the law into his own
hands where there will be an irreparable loss.

At that point, a set of cases will be examined, to uncover what law is implicit in the laws at hand. I should claim that, while the Mishnah-commentary is helpful, the sustained debate before us is interesting, and, without what follows, the Bavli would be merely a collection of lessons, rather than a composite of important conclusions, capable of governing in situations to which the laws of the Mishnah would prove monumentally irrelevant.

F. R. Judah said, "A man does not have the right to take the law into his own hands."

G. R. Nahman said, "A man has the right to take the law into his own hands where there will be a loss."

H. Now all parties concur that where there will be a loss, someone may take the law into his own hands. Where there is an argument, it concerns a case in which there will be no loss. R. Judah said, "A man does not have the right to take the law

into his own hands." Since there will be no loss, he can go to court. But R. Nahman said, "A man has the right to take the law into his own hands where there will be a loss." Since he is acting in accord with the law anyhow, why take the trouble to go to court?

I. Objected R. Kahana [to R. Judah's view], "Ben Bag Bag says, 'A person should not go and retrieve his own property from the household of someone else, lest he appear to be a thief. But he should be ready in public to break his teeth and you may say to him, "I am seizing what is my own from the thief's possession"' [T. B.Q. 10:38]." [This then would contradict Judah's position.]

J. [Judah] said to him, [28A] "True enough, Ben Bag Bag is on your side. But he is a dissenting view, differing from rabbis."

K. R. Yannai said, "What is the meaning, anyhow, of **break his teeth**? It is, in court."

L. If so, the language, you may say to him, is inappropriate. Rather it should be, **they [the court] may say to him!** So too, the language, **I am seizing what is my own**, is inappropriate. Rather, it should be, **he is seizing what is his own!**

M. So that's a problem.

N. Come and take note: in the case of an ox that climbed up on another one to kill it, and the owner of the one on the bottom came along and pulled out his ox, so that the one on the top fell and was killed — the owner of the bottom ox is exempt from having to pay compensation. Does this ruling not pertain to an ox that was an attested danger, in which case there is no loss to be expected?

O. No, it speaks of an ox that was deemed innocent, and there is a considerable loss to be expected.

P. If so, then look what's coming: If he pulled off the ox on top and it died, he is liable to pay compensation. But if the ox was deemed innocent, why should he have to pay compensation?

Q. Because he should have pulled his ox out from underneath, and he did not do that. [Kirkner: he had no right to push the ox on top.]

R. Come and take note: He who filled the courtyard of his fellow with jugs of wine and jugs of oil — the owner of the courtyard has every right to break the jugs in order to get out or break the jugs in order to get in.

S. Said R. Nahman bar Isaac, "He breaks the jugs to get out only if a court says he may do so, he may break the jugs to get in only to get whatever documents he needs to prove his case in court."

T. Come and take note: How on the basis of Scripture do we know that in the case of a slave whose ear had been bored [indicating that he was in perpetual service, to the Jubilee year], whose term of service has come to an end [with the Jubilee], whose owner has been urging him to leave, and, in the process, injured him and done him damage, the owner is exempt from having to pay compensation? Scripture states, "You shall not take satisfaction for him who is...come again..." (Num. 35:12), meaning, for one who is determined to come again [as a slave, continuing his service], you will not take a ransom.

U. Here with what sort of a case do we deal? It is a slave who was a thief [Kirkner: so the owner is protecting himself from a genuine loss].

V. Well, up to now he hasn't stolen anything, but now he's expected to go and steal?

W. *Yes, that's quite plausible, since up to now he was afraid of his master, but now that he is about to go free, he isn't afraid of his master anymore.*

X. R. Nahman bar Isaac said, "At issue is a slave to whom his master gave a Canaanite serving girl as a wife. Up to this time it was a legitimate relationship, but once he is freed, it is not legitimate" [Kirzner: so the master may use force to eject him].

Y. *Come and take note: He who leaves a jug in the public domain, and someone else came along and stumbled on it and broke it — [the one who broke it] is exempt. So the operative consideration is that he stumbled on it. Lo, if he had deliberately broken it, he would have been liable. [This is contrary to Nahman's view.]*

Z. *Said R. Zebid in the name of Raba, "In point of fact, the same rule really does apply even if the defendant deliberately broke the jug. And the reason that the language, and stumbled on it, is used, is that the later clause goes on to say, And if [the one who broke it] was injured by it, the owner of the barrel is liable [to pay damages for] his injury. But that would be the case only if he stumbled on it, but not if he deliberately broke the jug. How come? The man has deliberately injured himself. So that is why, to begin with, the word-choice was and stumbled on it.*

AA. *Come and take note: "Then you shall cut off her hand" (Dt. 25:12) — that refers to a monetary fine equivalent in value to the hand. Does this not speak of a case in which the woman has no other way of saving her husband but doing what she did [proving one may not take the law into one's own hands]?*

BB. *No, it involves a case in which she can save her husband in some other way.*

CC. *Well, if she cannot save her husband in some other way, would she be free of all liability? Then why go on to say, "And puts forth her hand" (Dt. 25:11) — excluding an officer of the court [from liability for humiliation that he may cause when acting in behalf of the court]? Rather, why not recast matters by dealing with the case at hand, thus: Under what circumstances? When she can save her husband by some other means. But if she cannot save him by some other means, then she is exempt.*

DD. *This is the sense of the passage: Under what circumstances? When she can save her husband by some other means. But if she cannot save him by some other means, then her hand serves as the agency of the court and she is indeed exempt.*

EE. *Come and take note: He who had a public way passing through his field, and who took it away and gave [the public another path] along the side, what he has given he has given. But what is his does not pass to him [M. B.B. 6:7A-D]. Now if you maintain that someone may take the law into his own hands, then let the man just take a whip and sit there [and keep people out of his property]!*

FF. *Said R. Zebid in the name of Raba, "It is a precautionary decree, lest he assign to the public a crooked path."*

GG. *R. Mesharshayya said, "It is a case in which he gives them a crooked path."*

HH. *R. Ashi said, "Any path that is over off to the sign is classified as a crooked path to begin with, since what is nearer for one party will be farther for another."*

II. *If that's so, then why specify, But what is his does not pass to him? Why can't he just say to the public, "Take what is yours and give me what is mine?"*

JJ. *That is because of what R. Judah said, for said R. Judah, "A path that the public has taken over is not to be disrupted."*

KK. *Come and take note: a householder who designated peah at one corner of the field, and the poor come along and take the peah from another side of the field — both this and that are classified as peah. Now if you maintain that a person may take*

the law into his own hands, why should it be the fact that both this and that are so classified? Just let the man take a whip and sit there [and keep people out of his property]!

LL. *Said Raba, "What is the meaning of the phrase, both this and that are so classified? It is for the purpose of exempting the designated produce from the requirement of separating tithes. For so it has been taught on Tannaite authority: He who declares his vineyard to be ownerless and then gets up early in the morning and harvests the grapes is liable to leave for the poor the grapes that fall to the ground, the puny bunches, the forgotten ones, and the corner of the field, but is exempt from having to designate tithes."*

The rather ambitious, free-standing composition is inserted only because the framer has drawn upon our Mishnah's rule as part of his repertoire of cases and evidence. It could have appeared more or less anywhere without any alteration of its character, since what we have is a propositional essay on a problem of broad intelligibility and more than narrowly episodic interest. It is at 4.D that the real point of debate takes over. We see that the issue is tangential to the exegetical problem, but critical in its own terms. It is further noteworthy that the issue is specified in a free-standing debate, set forth at 4.E-G. The sequence of cases moves toward the illustration of arguments one might propose, but, the Bavli being what it is, we shall work through cases that illustrate arguments, precedents that constitute facts to be addressed and held together in equilibrium, not arguments framed in a philosophical manner. Our cases emerge at 4.I, N, R, T, Y, AA, EE, KK. The Mishnah-paragraph before us is cited in the context of the debate, at Z. It is not distinguished in this context, and the formation of the whole goes forward entirely within the terms of the broadest nature; we never lose sight of what is at issue. Our eight cases, spread across the face of the laws of the Mishnah, are shown to address a single problem, and any eight other cases, far beyond the details of the Mishnah's law, can have served with equal effect. Now to answer specific questions that the foregoing analysis of concrete texts has settled.

IS THE BAVLI MUCH MORE THAN A MISHNAH-COMMENTARY?

No, the Bavli is not much more than a Mishnah-commentary. The paramount purpose of Mishnah-exegesis was realized in these inquiries into the law behind the laws. What is other than Mishnah-exegesis, rhetorically and topically, forms only a portion of the whole. What is other than Mishnah-exegesis, if not topically (for that is, by definition, excluded from this type of writing, which is not topical at all) is balanced, even in analytical proposition, by what merely carries forward an inquiry begun in the Mishnah itself.

IS THE BAVLI A WRITING THAT IS SYSTEMATIC OR (MERELY) AGGLUTINATIVE?

The Bavli is a systematic writing, occasionally using composites drawn together by principles of agglutination that do not in general govern in the Bavli, but then ordering these agglutinative composites entirely in accord with the Bavli's own program of Mishnah-commentary.

HOW RICH A CORPUS OF SOURCES IN THE BAVLI'S TRADITIONS?

The Bavli utilizes available sources, but among them was not a set of inquiries, worked out on their own terms and within their own framework, into the law behind the law. There is no question that, here and there, work on that interesting question was undertaken; but this was mainly, though not exclusively, in the framework of Mishnah-commentary, and nearly always expressed within the rhetorical framework established by a prior program of Mishnah-commentary. My initial expectation was that, through routine procedures of literary analysis, I could show that there was a "layer" of the Bavli, however thin, made up of a distinctive and essential discourse of another-than exegetical kind: writing that served an entirely distinct purpose from that that defined the structure and system of the Bavli overall. But the opposite result is now before us. The essential discourse comprising an inquiry into the law behind the laws is not a distinct source, whether early, whether late, upon which the framers of the Bavli drew; it is a discourse that is essential in a different, unanticipated sense altogether. It is essential to the exegetical purpose of the framers of the Bavli, in some few contexts, to move quite beyond their exegetical frame of reference. But when they chose to do so, they in no way differentiated in the signs of rhetoric that writing from any other. All proves uniform; all is set forth as essential in its context.

3. *The Bavli's Primary Discourse. Mishnah Commentary, its Rhetorical Paradigms and their Theological Implications in the Talmud of Babylonia Tractate Moed Qatan.* Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

The result of this monograph is simple, repeating results attained on different bases altogether: the Bavli in form and substance presents a commentary to the Mishnah, and, to markedly lesser degree, Scripture as well.

From 80% to 99% of the composites of the tractates of the Bavli — depending on the tractate — focus upon the work of Mishnah-exegesis. So the next task is to catalogue the types of exegetical compositions and composites that accomplish the paramount goal of explaining the sense and meaning of the Mishnah. In this monograph I treat in particular the manner in which the Talmud of Babylonia proposes, in Bavli-tractate Moed Qatan, to read Mishnah-tractate Moed Qatan. Defining in detail what the sages of the Bavli did, and how they did it, imparts immediacy and concreteness to the general description of their writing as "a commentary to the Mishnah." Not only so, but by showing how most of the Bavli's composites, as well as the larger part of the composites formed into those composites, form a commentary to the Mishnah or a secondary expansion of commentary to the Mishnah, I provide in highly graphic form a clear picture of the structure of the document as a commentary, covering also secondary elaboration of its own commentaries.

For the most part, the Talmud of Babylonia is a commentary to the Mishnah. Let me start by giving a simple example of what characterizes the initial phase of nearly every sustained composite of the Bavli: a commentary to the Mishnah. This is what I mean by Mishnah-commentary:

Mishnah-Tractate Baba Qamma 3:1

- A. He who leaves a jug in the public domain,
- B. and someone else came along and stumbled on it and broke it —
- C. [the one who broke it] is exempt.
- D. And if [the one who broke it] was injured by it, the owner of the barrel is

liable [to pay damages for] his injury.

L1 A. How come the framer of the passage refers to begin with to a **jug** but then concludes with reference to a **barrel**? And so too we have learned in another passage in the Mishnah: This one comes along with his barrel, and that one comes along with his beam — [if] the jar of this one was broken by the beam of that one, [the owner of the beam] is exempt. How come the framer of the passage refers to begin with to a barrel but then concludes with reference to a **jug**? And so too we have learned in the Mishnah: This one is coming along with his barrel of wine, and that one is coming along with his jug of honey — the jug of honey cracked, and this one poured out his wine and saved the honey in his jar — he has a claim only for his wages [M. B.Q. 10:4A-E]. How come the framer of the passage refers to begin with to a barrel but then concludes with reference to a **jug**?

B. Said R. Hisda, "Well, as a matter of fact, there really is no difference between a jar and a barrel."

C. So what is the practical difference between the usages?

D. It has to do with buying and selling.

E. *How can we imagine such a case? If it is in a place in which a jug is not called a barrel, nor a barrel a jug, for in such a case, the two terms are kept distinct!*

F. *The distinction is required for a place in which most of the people call a jug a jug and a barrel a barrel, but some call a barrel a jug and some call a jug a barrel. What might you then have supposed? That we follow the majority usage? [27B] So we are informed that that is not the case, for in disputes over monetary transactions, we do not follow the majority usage.*

All that we have here is an investigation of the linguistic properties of the Mishnah-paragraph that is cited. The framer of the anonymous writing notes that a variety of other passages seem to vary word choices in a somewhat odd way. The point of insistence — the document is carefully drafted, the writers do not forget what they were talking about, so when they change words in the middle of a stream of thought, it is purposeful — constitutes an exegetical point, pure and simple.

To understand precisely what the Bavli means by a commentary to the Mishnah, we have therefore to begin with a simple recognition: the Bavli asks the questions of not only the teacher, standing inside of the document and looking outward, but also of the reader, located outside of the document and looking inward. In what follows, then, the stance of the commentator now is external to the text, and the commentator wants to know why the Mishnah finds self-evident what is not necessarily obvious to all parties:

1:7-8/L1 A. *So if it's an occasion of rejoicing for the groom, what's so bad about that?*

B. Said R. Judah said Samuel, and so said R. Eleazar said R. Oshaia, and some say, said R. Eleazar said R. Hanina, "The consideration is that one occasion of rejoicing should not be joined with another such occasion."

C. Rabbah bar R. Huna said, "It is because he neglects the rejoicing of the festival to engage in rejoicing over his wife."

D. Said Abbaye to R. Joseph, "This statement that has been said by Rabbah bar R. Huna belongs to Rab, for said R. Daniel bar Qattina said Rab, 'How on the basis of Scripture do we know that people may not take wives on the intermediate days of the festival? As it is said, "You shall rejoice in your feast" (Dt. 16:14), meaning, in your feast — not in your new wife.'"

E. Ulla said, "It is because it is excess trouble."

F. R. Isaac Nappaha said, "It is because one will neglect the requirement of being fruitful and multiplying" [if people postponed weddings until festivals, they might somehow diminish the occasion for procreation, which is the first obligation]."

G. *An objection was raised: All those of whom they have said that they are forbidden to wed on the festival [9A] are permitted to wed on the eve of the festival. Now this poses a problem to the explanations of all the cited authorities!*

H. *There is no problem from the perspective of him who has said, "The consideration is that one occasion of rejoicing should not be joined with another such occasion," for the main rejoicing of the wedding is only a single day.*

I. *And from the perspective of him who has said, "It is because it is excess trouble," the principal bother lasts only one day.*

J. *And from the perspective of him who has said, "It is because one will neglect the requirement of being fruitful and multiplying," formerly one day someone will not postpone the obligation for any considerable length of time.*

What is important in understanding the nature of commentary in the Bavli is the dual stance of the commentator: inside and outside.

Now to generalize on the basis of the cases before us: what I mean by a commentary is a piece of writing that depends for its program — topics to be treated, coherence and cogency, alike — upon some other writing. We know the difference between a base-text and a commentary because the base-text will be cogent in its own terms, and the commentary will make sense only in relationship to the base-text. And we know the difference between the one and the other because a commentary's author will always signal the text, e.g., by citing a phrase or by a clear allusion, and will further identify what he then proposes to contribute. Commentaries may take a variety of forms, but the mark of them all will be the same: they make sense only by appeal to, in the context of, some piece of writing outside of themselves. But that common trait among them all scarcely exhausts the program that a commentary will undertake — or even define it. One type of commentary will follow a quite well-defined program of questions, another will promiscuously comment on this, that, and the other thing, without ever suggesting that the commentator has a systematic inquiry in mind. And, it goes without saying, the range of issues subject to comment — philological, historical, aesthetic, not to mention theological — can be limited only by the number of texts deemed by an author or compiler to deserve a commentary.

"Primary discourse," it is now clear, refers to the main lines of expression of a coherent document. When the Bavli's authorship, having cited a passage of the Mishnah, begins its statement, it always begins with attention to the cited passage. When further materials, not those of Mishnah-commentary follow, these relate to the initial discussion. So while many compositions, and even some very large composites, take shape in their own terms and stand independent of the Mishnah, when they find a place in the Bavli, it is ordinarily in the framework of Mishnah-commentary, very often as a secondary expansion of what is set forth to begin with for the exegesis of what is in the Mishnah. The material that we have examined leaves no doubt about the coherence of nearly everything in the Bavli. Materials that do not cohere either with Mishnah-exegesis, or with secondary amplification of that exegesis, prove sparse indeed. When we recall that sizable components of the Bavli —

numerous compositions — stand on their own and not as Mishnah-commentary, we realize how much the authorship of the Bavli has done in reframing matters to serve its distinctive purpose: nearly everything that they utilized, they presented in the framework of Mishnah-commentary and amplification. Briefly to summarize my results: here are the types of Mishnah-commentary that, over all, form the Bavli's primary discourse.

1. SCRIPTURAL FOUNDATIONS OF THE LAWS OF THE MISHNAH

The single most commonplace and characteristic inquiry of the Bavli is framed in the question: what is the source of the rule of the Mishnah? Conventionally, this inquiry occurs in simple language, e.g., "What is the source of this rule," always with the implication, "in Scripture"?

2. AUTHORITIES BEHIND THE LAWS OF THE MISHNAH

A primary exegetical question concerns whether or not a law stands for an individual's opinion or a consensus of sages. The inquiry takes a variety of forms. The simplest is, "Who is the authority behind the Mishnah's [anonymous] rule?" This allows us to find out whether we have a schismatic (individual) or normative (consensual) opinion; we may further ask whether the cited authority is consistent, testing the principle behind the rule at hand against the evidence of his rulings in other cases in which the same principle determines matters.

3. MEANINGS OF WORDS AND PHRASES

We come to Mishnah-commentary of the most conventional kind: explanation of the meanings of words and phrases of the Mishnah, appealing for scriptural parallels to set forth lexical evidence, on the one side, inquiry into the sense and meaning of sentences of the Mishnah, on the other.

4. TEXT-CRITICISM. THE ISSUE OF REPETITION

The matter of text-criticism covers a variety of distinct inquiries. In the first sort, we want to know why the Mishnah frames matters as it does, with the generative issue being whether or not the document repeats itself. The type of Mishnah-commentary is signalled by a single word, "it is necessary,"

and what will follow is an implicit justification of presenting more than a single rule or case. This form is not limited to Mishnah-criticism; on the contrary, it is commonly used for any formulation — Tannaite or other — of a variety of cases that illustrate the same principle, and the form, brief though it is, suitably sets forth the exegetical problem to be solved. Another kind of text-criticism involves the explanation of how a variety of examples hold together; the Mishnah may present three or more examples, and what we want to know is whether a stringency or leniency is conveyed by setting forth examples that do not really cohere.

5. CONFLICT OF PRINCIPLES IMPLICIT IN THE MISHNAH'S RULES

One important issue in the Bavli's Mishnah-commentary is whether or not two rules, intersecting in detail or in fundamental principle, cohere. A sustained effort characterizes the Bavli's inquiry into the harmony of the law of the Mishnah, the object of which invariably is to demonstrate that the Mishnah's laws form a single, wholly cogent law, perfect in their harmony.

6. EXECUTION OF THE LAW OF THE MISHNAH

At stake is where and how the simple rule of the Mishnah pertains; a Tannaite formulation of the same conclusion then reenforces the proposed reading of the Mishnah's rule.

7. THE OPERATIVE CONSIDERATION BEHIND THE LAW OF THE MISHNAH

One of the exegetically-productive initiatives of the Bavli will raise the question of the operative consideration that has led to a given rule in the Mishnah. That inquiry will lead us deep into the principles that are given expression in concrete rules, and we often see how entirely abstract conceptions are conceived to stand behind rather commonplace laws.

8. THE IMPLICATIONS, FOR THE LAW IN GENERAL, OF THE MISHNAH'S PARTICULAR FORMULATION

Here what generates the sustained discussion of the Talmud is a close reading of the Mishnah's language. This careful analysis produces an

inference that has to be investigated in its own terms. Since there is no understanding the sustained discussion apart from the Mishnah's own statement, the entire composition falls into the classification of Mishnah-commentary. Another mode of commentary, in the inquiry into the implications of the Mishnah's rule for law in general, involves presenting a theoretical possibility that is subject to confirmation, or refutation, by a statement of a Mishnah-paragraph. That theorizing in response to a rule of the Mishnah then explores the implications of a rule of the Mishnah.

9. SETTLING THE POINT SUBJECT TO DISPUTE IN THE MISHNAH

While not a principal focus of exegetical interest, some attention is given to settling the dispute presented in the Mishnah by a statement of the decided law.

If, therefore, we had to state in a single sentence the exegetical proposition, indeed the hermeneutical principle, that animates the Bavli's reading of the Mishnah, — another way of expressing what I earlier called its metapositional program — it may be stated very simply: the Mishnah is a supernatural writing, because it can be shown to be flawless in its language and formulation, never repetitious, never slovenly in any detail, always and everywhere the model of perfection in word and thought; the Mishnah is moreover utterly rational in its principles; and of course, the Mishnah is wholly formed upon the solid foundations of the written Torah of Sinai. No merely human being can have achieved such perfection of language and of thought in conformity with the Torah. That is the point made, over and over again, in the Bavli's primary discourse.

II. THE BAVLI IN CONTEXT: THE CONTEXTUAL UNIQUENESS OF THE TALMUD IN RELATIONSHIP TO OTHER WRITINGS IN ITS CANON

The second of the two sets of monographs turns to the question of context. What I learned here is that the Bavli really did impose its own judgment upon the entire antecedent canon, which its authorship(s) knew and utilized for their own purposes. Specifically, the Bavli is only one talmud — a sustained analytical criticism, through applied logic and practical reason, of a received document; it is a talmud to the Mishnah. But, as a matter of demonstrable fact, other documents, reaching closure prior to the Bavli, were

subjected to talmud-analysis along precisely the same lines characteristic of the Bavli's talmud to the Mishnah. But what the Bavli did was unique, in that only the Mishnah was subjected to a sustained, systematic, and comprehensive talmud: the Bavli's (and Yerushalmi's) polemic argued for the priority, indeed the privileging, of the Mishnah. Here I show there could have been other talmuds, serving Sifra for one instance (the one I summarize here), among various other composites of Tannaite statements, and that shows how the Bavli (and the Yerushalmi) imposed their judgment upon judgments made by others on the centrality of the Mishnah, its uniqueness.³

4. *How the Bavli Shaped Rabbinic Discourse*. Atlanta, 1991: Scholars Press for South Florida Studies in the History of Judaism.

Sometime between the closure of the Talmud of the Land of Israel, ca. 400, and the conclusion of the Talmud of Babylonia, ca. 600, *talmud*, a common noun that can connote the rigorous and systematic, critical analysis of a received document of Tannaite standing in the canon of the Judaism of the dual Torah, became a proper noun, The Talmud. The Talmud was a composite of critical analysis organized around, and focused solely upon, the Mishnah. There would be two Talmuds, the Talmud of the Land of Israel, the Talmud of Babylonia, both of them limited, for purposes of structure and organization, in focus to the Mishnah. Other writings accorded Tannaite standing could have had talmuds and did enjoy that critical dialectical reading that the Mishnah did. But only the Mishnah was privileged to receive the Talmud, and all other Tannaite writings were denied the talmuds that had accumulated around them during the centuries from ca. 200 through ca. 600. Viewed from the perspective of the redactional program of the Bavli, these other analytical-critical readings of documents other than the Mishnah served no purpose that the Bavli's ultimate redactors defined for themselves in their sustained reading of the Bavli and their episodic and rather sparse reading of all other writings. But those readings did serve those other documents, and in the sherds and remnants in our hands, we can see how a rigorous and systematic reading of those other writings was being written even while the Bavli's materials came forth. On redactional grounds, then, I maintain that the Bavli contains compositions and even composites that reached closure under

3. That opens the question of how the Bavli relates to the Yerushalmi. I have answered that question in two projects, Neusner 1993a, and 1993b.

auspices separate from the Bavli's. I further insist that it was the framers of the Bavli that dictated the shape of rabbinic discourse — not only for the future, but, more to the point, retrospectively as well: this but not that.

When the reading of the Mishnah that yielded our Talmud was under way, other documents, or materials of the same status — Tannaite — as the Mishnah, also were being read along the same lines. But those other talmuds never reached us, and although the Bavli contains ample indication that such talmuds could have come into being, it also contains no evidence that, in any sustained way, they did. Once we realize that ours is not the only Talmud that was under way from the closure of the Mishnah to the conclusion of the Bavli, 200-600, we then grasp how profoundly the framers of the Talmud of Babylonia reshaped all prior discourse, since, as I show in this monograph, they made certain that there would be only one talmud, the Talmud, and only one privileged document entitled to such a talmud, namely, the Mishnah. Accordingly, the compositors of the Bavli, or the Talmud of Babylonia preserve evidence that, just as the Talmud of Babylonia was worked out as an analysis and critique of the Mishnah, so other documents were subjected to the same kind of critical analysis. These compositors provide us with important samples of the written result of that analysis.

What we now shall see is a single example of how the analysis, in the Bavli, of a passage in the Sifra follows precisely the same rhetorical and logical rules that govern the analysis in the Bavli of a passage of the Mishnah. The way Mishnah-commentary was conducted in the Bavli is the same way that the same work was done in Sifra. It would seem to me that the prevalence of the same literary conventions in the reading of two distinct documents, each with its own indicative traits, strongly suggests the work was done more or less within the same period of literary formulation and among people responsive to the same conventions of analysis. Then a further fact will prove exceedingly suggestive. It is that the analysis of the Sifra's passage proceeds wholly in terms required by that passage and ignores the setting, within the composite of the Bavli, in which the Sifra's passage has been preserved. That seems to me to mean that the framers of the commentary on the Sifra's passage had in mind a document that would be devoted to not the Mishnah but Sifra. Then the framers of the critical analysis of the Sifra's materials proposed to produce a commentary to the Sifra, parallel to what was being accomplished for the Mishnah. But that commentary to the Sifra, that is, that *talmud to Sifra*, did not survive, except in bits and pieces in the Bavli itself.

Here we see how the Sifra's materials are articulated in relationship to the Mishnah, namely, in a first-class example of how the treatment of the Sifra's passage will highlight what the Sifra wishes to show, not what the Bavli's frame of a Mishnah-commentary cites the Sifra's passage to prove; the two propositions are complementary, but they are distinct. Then the further discussion of the passage at hand concerns not what is proved by the Sifra that is relevant to the Mishnah, but what is proved by the Sifra in terms important to its own framers. The distinction here is critical. The one passage wants to know how come "[From] the meal offering of a priest who was a sinner [Lev. 7:16], the handful is taken [even though the whole of it in any case is offered on the altar], and the handful is offered by itself, and the residue [thereof] is offered by itself." The Sifra's author is going to prove that "the performance of the meal-offering rite of a priest [who has inadvertently sinned] is assigned to that priest [so that he may perform his own rite and retain possession of the residue of the meal offering that he himself has presented]." That is, then, a talmud to the Sifra, not to the Mishnah. That proves my point, that the Sifra, as much as the Mishnah, not only can have had, but in fact did have, a talmud of its own:

IV.1 A. R. Simeon says, "[From] the meal offering of a priest who was a sinner [Lev. 7:16], the handful is taken [even though the whole of it in any case is offered on the altar], and the handful is offered by itself, and the residue [thereof] is offered by itself."

B. *What is the scriptural basis for this position?*

C. *It is in line with that which our rabbis have taught on Tannaite authority:*

D. "It shall belong to the priest, like the meal offering" (Lev. 5:13) —

E. The meaning is that the performance of the meal-offering rite of a priest [who has inadvertently sinned] is assigned to that priest [so that he may perform his own rite and retain possession of the residue of the meal offering that he himself has presented].

F. Or might the intent not be to declare permitted [to the priesthood the residue] of the tenth ephah of fine flour that has been brought by a priest? [Cashdan: the verse then tells us that a priest's obligatory meal offering is like the meal offering of an Israelite that is eaten by the priests after the handful has been taken out.]

G. How then shall I interpret the statement, "Every meal offering of a priest shall be wholly burned, it shall not be eaten" (Lev. 6:23/Heb.: 6:16)?

H. This then would refer to a meal offering that the priest has brought as a free will offering, and as to the tenth ephah that he has presented, that may be eaten.

I. But [contrary to that line of argument] Scripture states, "It shall belong to the priest, like the meal offering:"

J. lo, it is in the status of the meal offering that he presents as a free will offering, with the result that just as the free will offering of meal that he presents does not yield a residue that may be eaten, so the tenth ephah of fine flour that he presents may not be eaten.

K. Said R. Simeon, "And is it written, 'and it shall be the priest's as his meal offering'? What it says is, 'It shall belong to the priest, like the meal offering:'"

L. [73B] "Io, the tenth ephah of fine flour that a priest has brought is in the classification of the tenth ephah of fine flour that an Israelite presents.

M. "Just as the tenth ephah of fine flour that an Israelite presents yields a handful, so a handful is taken up from this offering as well.

N. "But might one then say, just as the handful is taken from the meal offering presented by the poor sinner who is an Israelite, and the remainder may be eaten, so when the handful is taken from the poor sinner's meal offering presented by a priest, the residue may be eaten?

O. "Scripture states, 'the priest's as the meal offering:' in what regards the priest, it is like the meal offering of a sinner who is of the Israelite caste, but in respect to what concerns the fire on the altar, it is not like that meal offering.

P. "The handful that is taken up is presented by itself, and the residue is presented by itself" [Sifra LXIII16].

2. A. *But is the rule that the rites of the priest's meal offering may be carried out by the priest drawn from that exposition? Surely it derives from the following:*

B. How on the basis of Scripture do we know that a priest may come to present his offerings at any occasion and at any time that he wants?

C. Scripture states, "And come with all the desire of his soul...and minister" (Dt. 18:6).

D. *Had I derived the ruling from that verse, I might have supposed that reference is made to something that is not presented by reason of sin, but as to something that is presented by reason of sin, I might have said that that is not the case.*

3. A. *But is the rule that the rites of the priest's meal offering may be carried out by the priest drawn from that exposition? Surely it derives from the following:*

B. "And the priest shall make atonement for the soul that errs, when he sins through error" (Num. 15:28) — this teaches that a priest may make atonement for himself through his own act of service.

C. *Had I derived the ruling from that verse, I might have supposed that that rule pertains only to offerings that are presented for a sin committed in error, but not for offerings presented for a sin committed deliberately; so we are informed that that is the case as well.*

D. *So are there really offerings that are presented for sins committed deliberately?*

E. Yes: deliberately taking a false oath [Lev. 5:1].

In the material at hand, a passage of the Sifra is introduced to prove a rule set forth in the Mishnah rests on Scriptural foundations. But what that passage proves is distinct, though related: not that the handful of the meal offering of a priest who has sinned is burned on the altar, along with the residue, but that the priest may present his own meal offering under the specific circumstances. Then No. 2 raises a question pertinent not to the issue that has required the framer of No. 1 to introduce the abstract of the Sifra, but to the passage of the Sifra itself. And No. 3 goes forward along the same lines. That is important, because the now-run-on quality of the composite is entirely routine in the

Bavli; here we see that precisely the principles of agglutination that govern in the Bavli's exposition of the Mishnah are in place in the exposition of the Sifra's claims. Two simple facts follow:

1) The way in which the framers of the Bavli read the Mishnah is the way in which the framers of passages, in the Bavli, on the Sifra read the Sifra.

2) Passages in the Sifra that are subjected to exegesis may be read not for purposes of Mishnah-exegesis but for purposes of Sifra-exegesis.

The upshot is simple: whether the classification of writing be given a temporal or merely taxonomic valence, the issue is the same: have these writers of talmuds done their work with documentary considerations in mind? That is, have they shaped their exegetical method to respond to the unique qualities of the distinct documents that they are treating? I believe I have shown that they have not. Three conclusions follow:

1) Because the modes of thought and analysis concerning the Sifra, the Tosefta, and the baraita-corpus in no way diverged from those that guided inquiry into the Mishnah, I claim that the work that was done falls into the category of talmud, as defined earlier.

2) And because some of these passages are sustained, I allege that, in addition to The Talmud, the one that imposes meaning upon the Mishnah, there not only can have been, but almost certainly were, other talmuds, in progress for the Sifra, the Tosefta, and components of the baraita-compositions and even compilations.

3) Where a talmud was taking shape around the Tosefta, the Talmud to the Mishnah would consist of the Tosefta's talmud, itself amplified and revised in relationship to the Mishnah's statements, thus, Mishnah-paragraph, Tosefta-amplification through restatement, in the Mishnah's language, of what the Mishnah was supposed to mean, and, third, further analysis of the Tosefta's judgment of the Mishnah's meaning and the Mishnah's unresolved issues.

The framers of the Bavli took control of, and closed off, prior discourse. They not only chose what would form the systemic statement that defined what we should call "Judaism" and what their apologists would call "the one whole Torah of Moses, our rabbi." They also privileged one document of choice, making its exegesis critical, and set in the background other documents that in earlier times, were subjected to exactly the same engaged exegesis as the Mishnah had long enjoyed. Alongside the Talmuds to the Mishnah (the Yerushalmi and the Bavli as we know them), there might have been a variety of talmuds — the talmud to Sifra, the talmud to Tosefta; the Talmud that we do have, had it emerged only as a secondary development of the talmud to

Tosefta, might have been a very different document from what it is. But that is not what we have.

5. *The Bavli's Massive Miscellanies. The Problem of Agglutinative Discourse in the Talmud of Babylonia.* Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

Two conflicting characteristics mark the Bavli. It is, first, a disciplined and well-organized, carefully crafted piece of writing. Most of the document is formulated in accord with a few simple rules, so that it is well-organized and easily followed. The Bavli, viewed whole, is carefully set forth as a commentary to the Mishnah, and the vast majority of its composites are put together so as to elucidate the statements of the Mishnah. But in the pages of the Bavli we observe, second, very large composites, not formed into Mishnah-commentaries at all. These composites do not follow the rules that govern the formation of the composites that serve as commentaries to the Mishnah. Whoever put the miscellanies together had a different program in mind. And if the framers of the miscellanies had in mind that they ultimately would be collected in a piece of writing of some dimensions, then that writing that the imagined bears no resemblance to the writing in which their miscellanies did end up, that is, the Bavli.

The Talmud of Babylonia therefore makes use of two distinct principles for the formation of large-scale composites of distinct compositions. Ordinarily, its framers brought together distinct and free-standing compositions in the service of Mishnah-exegesis and amplification of law originating in a Mishnah-paragraph under analysis. For that purpose they would then draw upon already-written compositions, which would be adduced as cases, statements of principles, fully-exposed analyses, inclusive of debate and argument, in the service of that analysis. So all of the compositions in a given composite would serve the governing analytical or propositional purpose of the framer of the composite. Where a composition appears to shade over into a direction of its own, that very quickly is seen to serve as a footnote or even an appendix to the composite at hand. Clear, governing, and entirely predictable principles allow us to explain how one composition is joined to another. Ordinarily, a sizable miscellany will tell us more about a subject that the Mishnah addresses or richly illustrate a principle that the Mishnah means to set forth through its cases and examples. In that sense, the miscellaneous kind of composite is set forth as Mishnah-commentary of a particular kind. An agglutinative composite may be formed by appeal to a common theme,

ordinarily stated by the Mishnah or at least suggested by its contents, and several closely-related themes will then come under exposition in a massive miscellany. One common theme will be a passage of Scripture, systematically examined. A subordinate principle of agglutination will join composites attributed to the same authority or tradent, though it would be unusual for the compositions so joined to deal with entirely unrelated topics. So the principal point of differentiation between propositional composites and agglutinative ones is that the former analyze a problem, the latter illustrate a theme or even a proposition.

What then accounts for the large-scale "miscellanies"? Quite random compositions, each with its own focus, will be formed into a composite on the basis of one of three theories of linkage: [1] topic, [2] attribution, or [3] sequence of verses of a passage of Scripture. The agglutination of topically-coherent compositions predominates. And this leads to a further theory on the miscellany. The conglomerates of random compositions formed into topical composites ordinarily serve as an amplification of a topic treated in the Mishnah, or are joined to a composite that serves in that way, so that, over all, the miscellanies are made to extend and amplify the statements of the Mishnah, as much as, though in a different way from, the commonplace propositional, analytical, and syllogistic composite. What appears to be a random hodgepodge of this and that and the other thing in fact forms a considered and even crafted composite, the agglutinative principles of which we may readily discern. In fact what we have in the miscellany is nothing more than a Mishnah-commentary of a peculiar sort, itself extended and spun out, as the more conventional Mishnah-commentaries of the Bavli tend to be extended and spun out. This kind of commentary collects and arranges information deemed relevant to the topic of the Mishnah-paragraph under discussion, not analyzing but illustrating that topic. What appears to be odd, incoherent, pointless, rambling, to the contrary attests in its own way to the single and definitive program of the Bavli's framers. Whatever those framers wished to say on their own account they insisted on setting forth within the framework of that received document upon the structure of which they made everything to depend.

6. *Sources and Traditions. Types of Composition in the Talmud of Babylonia.* Atlanta, 1992: Scholars Press for South Florida Studies in the History of Judaism.

For the title of this monograph I have taken an excellent distinction proposed by David W. Halivni in his Hebrew work of the same title, namely, *Meqorot ummessorot*, in English translated by him as *Sources and Traditions*. This means, [1] sources as materials utilized by an authorship from what was ready made, as against [2] materials framed by that authorship on their own account. Halivni had a very good idea for a scholarly project, but he executed it incompetently. The reason is that his entire analysis, beginning to end, rests on complete credulity: what is assigned to a given name really was said by that person, where and when he lived; there is not a trace of critical acumen in Halivni's work. For he begins his analysis of the Bavli with radically isolated bits and pieces, phrases and sentences assigned to individual names, taken out of context; I begin mine with the Bavli as a whole and I work back from the whole to the parts, stage by stage. Either his approach is right, or mine is, but both cannot be correct, and, it must follow, either his results or mine must in the end win the field. Since his approach takes for granted that what is assigned to a given authority really was said by him (or by someone in the period in which he lived who bore the same name), and since my approach is formed in response to the critical program of contemporary critical learning, which denies *prima facie* validity to attributions in the absence of evidence that a named authority really said what he is supposed to have said, my approach will prevail. But his distinction between traditions and sources stimulated me to some interesting inquiries.

To explain: "the sources" of the Bavli are those completed, available, and free-standing pieces of writing that the authors of the Bavli used when they wrote their book. "The traditions" of the Bavli are those composites and sustained discussions that the authors of the Bavli set forth in their writing. What I want to know is a simple matter. Upon what kinds of material did the framers of the Bavli draw when, having done their own kind of writing, which was Mishnah-commentary, analysis, expansion, and amplification, they filled out their document? For as a matter of simple fact, they augmented their main writing, Mishnah-commentary, with a different kind of writing altogether. That other kind of writing is so distinct from the sort that served for their principal purpose that it demands attention in its own terms. When we know what kinds of writing, other than those that formed the stuff of the document and quite different therefrom, were utilized in the framing of the Bavli, we

shall know something about the sources, prepared, to be sure, under auspices we cannot identify, for purposes we do not know, and at a time we cannot determine, that ultimately flowed into the foundation-document of Judaism.

It is the simple fact, shown by me in various monographs, that the authorship of the Bavli takes over a substantial heritage and reworks the whole into its own sustained and internally cogent statement — and that forms not the outcome of a process of sedimentary tradition but the opposite: systematic statement of a cogent and logical order, made up in its authorship's rhetoric, attaining comprehensibility through the syntax of its authorship's logic, reviewing a received topical program in terms of the problematic and interests defined by its authorship's larger purposes and proposed message. The samples of the Bavli I have reviewed constitute either composites of sustained, essentially syllogistic discourse, in which case they form the whole and comprehensive statement of a system, or increments of exegetical accumulation, in which case they constitute restatements, with minor improvements, of a continuous tradition.

But this brings us to the matter of "sources" — available writings, utilized but not made up — upon which the authorship of the Bavli drew for its own purposes. In fact the authorship of the Bavli made use of sources, both completed documents, and also sayings and stories, ordinarily of modest proportions. We know about the latter because these received and completed compositions, sayings or sets of sayings and stories alike, were not subjected to ultimate redaction. That fact is shown by a very simple criterion: does this composition in all its details serve the purpose of the framers who have adduced it in evidence for their purposes? The answer is invariably, rarely in many details, never in all. In fact the received sources are given pretty much in a form quite independent of the purpose for which, in the Bavli, they are adduced in evidence. True, the authorship of the Bavli did whatever it wished with these materials to carry out its own program and to make its own prevailing statement. Where relevant to the purposes of the framers of the Bavli, these received materials were undeniably formulated and transmitted in a process of tradition. Indeed, they have been so reworked and revised by the penultimate and ultimate authorship that their original character has been obscured. But, then, we can identify many other such writings that were not only not reformulated but indeed not reshaped in such a way as to win for themselves a clear and cogent position in the passage in which they now appear. These latter kinds of compositions *in no way* define for the Bavli the syntax of argument and the processes of syllogistic discourse; all they do is supply facts for someone else's case. That is why in the instances of the

compositions irrelevant to the thrust and flow of the Bavli's argument, we can still discern traces of received statements or sources.

That fact has now to be set into contrast with the view of many, that the Bavli supposedly draws upon and reshapes available ideas and reworks them into a definitive statement, hence turns sources into a tradition. The kind of material I analyzed in this monograph contradicts that view, since what we see is writing that has not been reworked at all. Let me specify the kinds of factual information that will permit me to frame a reply to the question before us. If I want to know criteria for authority, I have to ask about the relationship between a document and prior treatments of the topic of said document. For one critical criterion of continuity — of forming a tradition out of available sources — is the capacity to take in, hold together, and rework the entirety of a prior corpus of information, writing, on a given subject. The literary test of traditionality is whether or not the canonical statement has drawn together and reworked in a cogent way whatever lay to hand in prior writings. If the test proves affirmative, then we may propose as one substantial and necessary criterion for traditionality a particular relationship to the entirety of prior writing. If it proves negative, then the entire literary dimension of the problem of traditionality turns out to weigh the wind, measure what has no weight. A different approach to the criteria by which the entirety of the literature of Judaism forms a single canonical statement will require invention and exploration.

My survey of four tractates, documented in this monograph, yielded a small number of "sources," compositions developed in response to a program of writing, and even compilation, entirely out of phase with that of the Bavli, but upon which the framers of the Bavli clearly have drawn. I find these types and no others:

1. A sustained reading of sequential verses of Scripture
2. Stories about sages
3. Eposidic exposition of individual verses
4. Proof of a proposition in no way relevant to the Mishnah or Mishnah-exegesis

The authorship of the Bavli was engaged by its own concerns, ordinarily using what it has received without extensively incorporating all received materials into its own literary framework at all. So I think that there really were "sources" prior to, and in clear distinction from, the tradition that the Bavli's framers set forth. That the Bavli's authorship had access to these four

classes of writing indicates that other kinds of documents and types of writing were underway besides theirs. People wrote compositions that can have been collected, e.g., in lives of sages, or in collections of Midrash-compilations (in addition to the handful that we have in hand). Whatever the Bavli's writers picked or choose beyond their primary foci makes slight impact upon the document as a whole. So I think that the framers of the Bavli drew upon a variety of sources in the formation of their tradition. Most of these appear to have been trivial and to have played no important part in the shaping of the document. But, when, having done their own kind of writing, which was Mishnah-commentary, analysis, expansion, and amplification, the framers of the Bavli filled out their document, it was with one kind of writing that vastly expanded the document, turning the exegesis of the Mishnah into something larger and more elegant than a commentary: an essay on the law behind the laws. The authorship of the Bavli augmented their main writing, Mishnah-commentary, with a different kind of writing altogether. That other kind of writing is so distinct from the sort that served for their principal purpose that it demands attention in its own terms. We now know what kinds of writing, other than those that formed the stuff of the document and quite different therefrom, were utilized in the framing of the Bavli. These I identify and analyze in *The Bavli's Massive Miscellanies. The Problem of Agglutinative Discourse in the Talmud of Babylonia* (1992) - but that is another story.

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